

NOT DESIGNATED FOR PUBLICATION
DIVISION I

CACR05-1041

APRIL 19, 2006

NATALIE GARTMAN	APPELLANT	APPEAL FROM THE POINSETT COUNTY CIRCUIT COURT [NO. CR-02-195A]
V.		HON. DAVID R. GOODSON, JUDGE
STATE OF ARKANSAS	APPELLEE	AFFIRMED

Appellant Natalie Gartman appeals from the trial court's decision to revoke her probation and sentence her to thirty-six months' imprisonment. On appeal, Gartman raises only one point: that there was insufficient evidence to support the probation revocation based upon her alleged failure of a drug test. We affirm.

In March 2003, Gartman pled guilty to possession of methamphetamine and was placed on probation for a period of thirty-six months. The conditions of her probation included, among other things, requirements that she "must not use ... any controlled substance," that she report to her probation officer as directed, that she must not commit a criminal offense punishable by imprisonment, and that she be "gainfully employed ... at all times." The State filed a petition to revoke Gartman's probation on April 22, 2004, alleging that she had used drugs while on probation, that she had failed to report to her probation officer as directed, that she had been arrested in March 2004 for various offenses, and that she had failed to maintain gainful employment.

At a June 1, 2005, hearing on the State's revocation petition, John Hatcher testified that he was Gartman's probation officer from March 2003 to November 2003 and that Gartman failed to report to him as directed during this time. Specifically, he said that she failed to report in May and June of 2003, and that she also failed to report in September 2003. Hatcher further testified that Gartman tested positive for methamphetamine during drug tests conducted in September and October of 2003. He also said that, while Gartman was under his supervision, she failed to maintain gainful employment.

At the conclusion of the evidence, Gartman's counsel moved to dismiss the State's petition. The trial court denied the motion and went on to say the following:

I understand that if the Court had heard this ... when the petition was originally filed, there would have been two direct violations of good conduct by use of drugs, there would have also been the failure to report as directed on more than one occasion, which alone is conduct sufficient to revoke the probation. Those two acts or three acts or four acts – however you want to count them – I'm – I've revoked probation for less than that before.

I'm not concerned about payment of fees. I don't even know if that's an issue. I'm not concerned about all the other matters, but someone who uses drugs after being placed on probation just doesn't show good sense, and that is clearly what Ms. Gartman has done, and I'm going to find that she violated probation back in 2004.

The trial court subsequently sentenced Gartman to thirty-six months in prison.

Our supreme court has held that in order to revoke probation or a suspended sentence, the burden is on the State to prove the violation of a condition of probation or suspended sentence by a preponderance of the evidence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). On appellate review, the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Id.* Thus, the burden on the State is not as great in a revocation hearing. *Id.* Since determination of a

preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the trial judge's superior position. *Id.*

Here, the trial court based its decision to revoke Gartman's probation on two things: Gartman's drug use and her failure to report to her probation officer as directed. On appeal, Gartman challenges only one of these bases—her drug use. When a party appealing from a ruling leaves an alternate, independent ground for the ruling unchallenged, the circuit court's ruling must be affirmed. See *Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002); *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989). Because Gartman failed to challenge the trial court's alternative ground for revoking her probation (*i.e.*, that she failed to report to her probation officer as directed), we must affirm.

Affirmed.

NEAL and BAKER, JJ., agree.